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Testimony in Support of LD 1672-An Act to Establish an Affordable Housing Permitting Process

Joint Select Committee on Housing

January 5, 2024

Senator Pierce, Representative Gere and members of the Committee on Housing,

I am Eamonn Dundon, Director of Advocacy of the Portland Regional Chamber of Commerce. We represent 1,300 businesses in our region who employ over 65,000 Mainers. We are submitting this written testimony today to express our organization's strongest support for the necessary reforms contained in LD 1672. For too long we have made it too onerous to develop affordable housing in Maine, primarily due to a patchwork of local regulations and unpredictable timelines for obtaining necessary approvals. LD 1672 is a commonsense step towards rectifying both of those hurdles to affirmatively advance our broad state economic goal of increasing affordable housing production. The need is too great and the timeline too short to continue to rely solely on volunteer municipal boards to make decisions that impact the future of our economy and our families.

In 2022, thanks to the leadership of many on this committee, we advanced LD 2003. This was a first step towards creating a floor of zoning and land use permissions in Maine that contained a 2.5x density bonus for affordable housing developments, opening countless sites in our region and around the state for feasible, financeable, and permissible development. However, these bonuses are of little value if the unpredictability of the permitting processes drives higher costs of capital, labor, and materials for affordable housing providers while quality applications languish in months and even years of duplicative reviews.

When we testified in favor of LD 2003, we noted that when permitting new housing, municipalities internalize discussions which have inherent external interested parties. When we place all the decision-making power around housing development applications in the hands of people who already live in a community, we are necessarily excluding the input and interest of those who would like to move to that community but can't because they cannot afford to live there. This leads to local officials who only have an interest in listening to local concerns, ignoring the negative externalities their decisions may have on issues of state interest like economic growth, household prosperity, and homelessness.

In Maine, discussions about the creation of affordable housing happen almost exclusively around single projects in different communities. Groups like employers, state and federal policy makers, and renters all have an interest in expanding the supply of housing, but when the decisions necessary to make that happen are cordoned off into community-specific projects, they don't have the opportunity to participate, ceding the public involvement almost exclusively to NIMBY homeowners who carry great influence with town and city councils. Because these excluded groups do not have a way to be at the table, local land use restrictions have been enacted that directly undermine economic mobility and growth, to the detriment of the state as a whole.

Case Study: Cape Elizabeth

Cape Elizabeth serves as a glaring example of this inaction. Despite a compelling proposal in 2021 for 49 units of affordable housing in the town center—close to schools, stores, and other essential services—the project faced a staggering 18 meetings before approval. This is despite the town identifying affordable housing as a need in their comprehensive plan all the way back to 1993, reaffirming that need in the 2019 comprehensive

plan, and consistently directing growth in the town towards this town center area in several comprehensive plans.

The developer first presented this project to the Town Council on February 1st of 2021. At that time, his goal was to receive town approvals by August 2021, with lease-up in June of 2023. The Town Council referred the project to the Planning Board on February 8th. The Planning Board held their first workshop on February 16th. They held subsequent workshops on March 2nd, March 16, April 20, and May 4, 2021. The Town Council held additional workshops and reviews on April 7, May 10, May 19, June 14, June 22, July 12, August 2, September 8, September 13, and September 29, with final approval on October 13, 2021.

Unfortunately, even after that exhaustive review, Cape Elizabeth voters overturned the final approval in a municipal referendum in November of 2021. That is eighteen meetings for one development at 49 units. Eighteen meetings where the applicant had to pay professional architects and engineers to be present for questions, driving total development costs higher. Eighteen meetings where volunteer board members and city staff had to spend hours relitigating the same narrow issues. That is eighteen meetings of futility that ended in the project failing to proceed due to local objections that will always override statewide interest if we allow this parochial decision-making framework to persist.

While this project never came to fruition due to needless permitting delays and hurdles, if it had been finally approved sometime in the spring of 2022, it likely would have been cost prohibitive to proceed due to delays. Using rate date from the Federal Home Loan Bank of Boston, construction rates would have spiked from 2.48-3.38% when the project was first submitted to 4.99-5.99% when the project would have finally been improved. This over 100% increase in the cost of capital would have been the death knell for this project, even if it had been approved given the unnecessary length of the permitting process.

If we assume it takes 18 meetings to approve 50 units of development, in order to achieve our 82,000-unit statewide goal by 2030 we would need 29,520 municipal meetings at the pace Cape Elizabeth conducted their review of this project. There are 1,563 business days until January 1, 2030, so at that pace we would need at least 19 meetings every single business day of the year statewide through that date to conduct those 29,520 municipal meetings. That is simply an unacceptable timeline if we are to achieve our new production goal by 2030.

Potential Amendments

While we recognize that LD 1672 would be an enormous step forward in facilitating much needed affordable housing in Maine, we do have some suggestions to better achieve the goals of the legislation. Generally, we find the review standards for applications to be overly proscriptive, and we suggest the following amendments to mollify the worst of the potential unintended consequences contained within them:

1. **Sec. 2, §5074, sub-§ 3-A:** We are concerned that the review standard related to protecting the “health and safety of the occupants of the proposed development” is needlessly ambiguous and could lead to litigation reversing a decision of the affordable housing permitting board based on specious complaints about resident health and safety. Instead, we recommend inserting language tying this section to relevant building codes that inherently ensure the health and safety of residents without being open to ambiguity.



2. **Sec. 2, §5074, sub-§ 3-C(2):** We recommend deleting all but the first sentence of this paragraph. There is no need to arbitrarily require gabled or hip roofs in residential areas, while only allowing flat roofs in commercial areas. Indeed, there are many examples of flat roof buildings in Maine’s residential neighborhoods, and matching the context of the surrounding neighborhood, as is required in the first sentence of the paragraph, more than satisfies the desire to have developments approved under this permitting path respect the relevant neighborhood context.
3. **Sec. 2, §5074, sub-§ 3-C(6):** We recommend either deleting this section or adding to the final sentence “, or the currently established heights in a municipality’s land use code.” We can think of several examples in our region of heights in a municipality’s land use code that exceed the existing heights in their neighborhood and exceed what might have been contemplated in a municipality’s comprehensive plan. Thus, we think the simple addition of this option would allow for applicants to choose the least restrictive of this comprehensive list of options.
4. **Sec. 2, §5074, sub-§ 3-F:** We recommend deleting this section. In the current environment of increased online shopping and resulting retail vacancies, it is exceedingly difficult to finance retail development on spec. This is especially true for developers of affordable housing who are often using lending products that preclude financing for non-residential spaces in a building. Additionally, given the height restrictions in this legislation and in municipal land use ordinances, devoting space to retail in an affordable housing development removes space from residential use, arbitrarily limiting the number of units provided within a proscribed building envelope. At this time of great need for more housing production, we must keep our focus on expanding areas for housing, not flooding the market with retail spaces for which little demand exists.

We thank you for your time and commitment to all Mainers, and we ask for your expeditious approval of this important legislation.